

E-Filed 12/19/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SALVADOR NEGRETE,
Plaintiff,

No. C 12-0809 RS (PR)

ORDER OF DISMISSAL

v.

G.D. LEWIS, et al.,
Defendants.

_____ /

This is a federal civil rights action. The complaint was dismissed with leave to amend. Plaintiff has filed an amended complaint. The action is hereby DISMISSED because the amended complaint fails to cure the deficiencies discussed in the Court's prior order. The allegations are conclusory and undetailed, and as such fail to show that plaintiff suffered an actual injury because of an inadequacy in the prison's legal access program. More specifically, he has failed to show that the alleged inadequacy in the prison's program hindered his efforts to pursue a non-frivolous claim concerning his conviction or conditions of confinement. *See Lewis v. Casey*, 518 U.S. 343, 354–55 (1996).

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Petitioner's motion for the appointment of counsel (Docket No. 7) is DENIED. The decision to request counsel to represent an indigent litigant under § 1915 is within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). A finding of "exceptional circumstances" requires an evaluation of the likelihood of the plaintiff's success on the merits and an evaluation of the plaintiff's ability to articulate his claims *pro se* in light of the complexity of the legal issues involved. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). Neither the need for discovery, nor the fact that the *pro se* litigant would be better served with the assistance of counsel, necessarily qualify the issues involved as complex. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). Plaintiff has not shown that exceptional circumstances exist. The Clerk shall terminate Docket No. 7, enter judgment in favor of defendants, and close the file.

IT IS SO ORDERED.

DATED: December 19, 2012


RICHARD SEEBORG
United States District Judge